

**United States Department of Labor
Employees' Compensation Appeals Board**

B.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Decatur, GA, Employer**

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**Docket No. 15-0975
Issued: August 5, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2015 appellant filed a timely appeal from a January 9, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the filing of this appeal and the last merit decision issued on May 9, 2014, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.²

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On January 31, 2014 appellant, then a 58-year-old distribution, sales, and services associate, filed an occupational disease claim (Form CA-2) alleging tendinitis and carpal tunnel syndrome due to repetitive movements at work. These movements included throwing parcels and processing mail. Appellant reported that she had previous right hand surgery in January 2012 and returned to work in March 2012 with restrictions for her right hand. She stated that she did everything with her left hand and over time developed the same problems in her left hand. Appellant first became aware of her condition on January 18, 2013 and first realized it resulted from her employment on January 19, 2013. She stopped work on December 16, 2013 and did not return.

On November 7, 2013 the employing establishment controverted appellant's claim arguing that she had failed to provide medical documentation establishing a causal relationship between a diagnosed condition and her employment. It noted that appellant's previous right hand surgery was not employment related. OWCP also received a position description for a distribution, sales, and services associate.

In a February 19, 2014 letter, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested a medical report containing a physician's opinion with a medical explanation of how her work factors caused the claimed condition. OWCP also requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of appellant's statements.

In a December 16, 2013 operative report, Dr. Linda Cendales, a general surgeon, reported that appellant underwent left wrist surgery to treat de Quervain's disease. She reported, in a March 12, 2014 form report, that appellant was seen on December 27, 2013 for left wrist pain. Dr. Cendales diagnosed de Quervain's disease and indicated that appellant could return to limited duty on April 4, 2014.

In a March 13, 2014 statement, appellant described her employment duties as breaking down mail, throwing parcels, and casing letters. She confirmed having surgery on her right wrist and indicated that it was to treat a repetitive stress injury.

On May 9, 2014 OWCP denied appellant's claim, finding that the medical evidence did not demonstrate that appellant's condition was causally related to her employment.

By letter dated September 9, 2014, received on September 17, 2014, appellant requested reconsideration on September 9, 2014. She did not submit additional evidence or offer arguments in support of her request.

In a January 9, 2015 decision, OWCP denied appellant's request for reconsideration finding it insufficient to warrant a merit review of its prior decision.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under § 8128(a) of FECA, OWCP regulations provide that a claimant must: (1) show that OWCP erroneously applied or

interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.⁴

ANALYSIS

In a May 9, 2014 decision, OWCP denied appellant's occupational disease claim and on September 9, 2014 appellant requested reconsideration.

The Board has no jurisdiction over the merits of appellant's claim and can consider only whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), which would prompt OWCP to reopen the case for merit review. In her September 9, 2014 request for reconsideration, appellant did not submit any new and pertinent evidence, advance a relevant legal argument not previously considered, or contend that OWCP erroneously applied or interpreted a specific point of law. Accordingly, the Board finds that OWCP properly denied merit review.⁵

On appeal, appellant contends that OWCP failed to consider medical evidence that she submitted with her request for reconsideration. She asserts that it might have been misplaced.⁶ However, there is no evidence on record that appellant submitted any documentation with her request.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) without further merit review.

³ *Id.* at § 10.606(b)(3); *see J.M.*, Docket No. 09-218 (issued July 24, 2009).

⁴ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁵ *See J.C.*, Docket No. 11-236 (issued August 12, 2011).

⁶ Specifically, appellant describes a medical report, not found in the case record, in which an unnamed physician allegedly stated that appellant's injury was most likely caused by her repetitive work duties.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board